

EUGENE CHMELAR

IBLA 86-1647

Decided September 14, 1988

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease NM-66784(TX).

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

When the Government rejects a competitive oil and gas lease high bid because the bid was less than fair market value, to be awarded the lease, the bidder must not only show error in the BLM valuation, but must also establish that the bid submitted represented fair market value.

APPEARANCES: Margaret A. Polansky, Esq., College Station, Texas, for appellant; Margaret C. Miller, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Eugene Chmelar has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated August 14, 1986, rejecting his high bid for parcel 21, NM-66784(TX), offered in the July 23, 1986, competitive oil and gas lease sale. Chmelar bid \$76 per acre for this tract. No other bids were received. On July 24, 1986, BLM sent Chmelar notice his bid would probably be rejected because it was lower than BLM's presale estimate of value (PEV) for parcel 21. The PEV was not revealed. Chmelar responded to BLM on August 4, 1986, explaining that his bid was based on the cost of drilling on the parcel 21 location, and supplied known production data for wells in the area, and current prices for oil and gas. BLM then issued the decision on appeal.

Attached to the August 14, 1986, BLM decision is a memorandum dated August 13, 1986, from the chief, Southwest Region Evaluation Team (SRET), which explains the basis for the PEV for parcel 21, and reveals the PEV to be \$425 per acre. In his statement of reasons on appeal, Chmelar asserts that, although his bid was substantially lower than the SRET estimate, his bid represents true market value for parcel 21. Chmelar contends there are two major factors relevant to this determination: the cost to drill and

complete a well and the expected return from the lease. He states that the cost of drilling on parcel 21 would be similar to another operation which he completed, the Joiner-Whitehead well, which was \$683,021.34. He contends that SRET's oil prices used in calculating PEV were out-of-date, and that correct calculations of value for West Texas intermediate crude oil ranged from \$26 to \$8 during the relevant timeframe, with a prevailing price of \$14 per barrel. Chmelar places the contract price of gas at \$1.35 per million cubic feet, and argues the oil to gas equivalent is one barrel of oil to 10 million cubic feet of gas. He also offers data for two wells in the vicinity with similar potential to support his estimate of value for parcel 21.

In response to Chmelar's evaluation of parcel 21, the SRET has made a recalculation of the PEV, which counsel for BLM has submitted to this Board. BLM's revised PEV is now stated to be \$205 per acre. This revision was made by using the data submitted by Chmelar in addition to the data base previously employed by SRET. After discussing the data supporting the prior BLM estimate of value, the SRET evaluates Chmelar's information, observing that:

[H]e states that his bonus bid was based on expensive drilling costs due to location and Corp of Engineers' rules and regulations. He did not, however, provide any cost data. Although his letter states that the area does not have outstanding production and that geologic data are not available * * * [BLM] obtained and utilized readily available geologic and production data for the DCF [Discounted Cash Flow] analysis. Eugene Chmelar also states that oil and gas price reduction was a factor in his bid; again, the DCF analysis used current oil and gas prices. In summary, Eugene Chmelar's response did not provide any new geologic, engineering, or cost data which could be used by * * * [BLM] in formulating a postsale PETV [Provisional Estimate of Tract Value].

(SRET Memorandum dated Nov. 12 1986, at 2). The SRET then concludes:

The information submitted by Mr. Chmelar in his statement of reasons (Attachment 3) was also reviewed and incorporated into a final analysis. In the final analysis (Attachment 4), the drilling costs were adjusted to reflect Mr. Chmelar's information. The expected reserves were also decreased and the price per barrel was also lowered (the \$21.00 high price is based on a forecast by Chevron Oil Corporation). This analysis yielded a Final Estimate of Tract Value (FETV) of \$205.00 per acre. As Mr. Chmelar's high bid of \$76.00 per acre is substantially below that FETV and as the adjusted comparable sales value and the DCF value cross validate one another, we again recommend the high bid be rejected.

Id. at 2. Chmelar has not responded to this evaluation or to the supporting data supplied with it.

[1] The Secretary of the Interior has the discretionary authority to reject a bid for a competitive oil and gas lease if the bid is deemed inadequate. 30 U.S.C. | 226(b) (1982); 43 CFR 3120.5(a); Miller Brothers Oil

Corp., 100 IBLA 172 (1987); MTS Limited Partnership, 95 IBLA 337 (1987). Departmental policy in the administration of its competitive leasing pro-gram is to seek the return of fair market value from the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Victor P. Smith, 101 IBLA 100 (1988); Viking Resources Corp., 80 IBLA 245, 246 (1984); Glen M. Hedge, 73 IBLA 377 (1983). Past Board decisions establish that at a minimum, BLM must disclose the PEV and provide some explanation for the rejection of a high bid. Suzanne Walsh, 96 IBLA 374 (1987); Southern Union Exploration Co., 97 IBLA 275, 284 (1987) (concurring opinion).

In this case, Chmelar has presented his own analysis which must be evaluated to determine whether it represents fair market value. Suzanne Walsh, *supra*. While Chmelar has provided some additional data to support his bid, he has not submitted new geologic, engineering, or cost data to support his conclusion that his bid represents fair market value. His bid remains less than half the revised estimate of such value arrived at by BLM's experts. On the record before us, we cannot find error in BLM's amended estimate of value derived from use of a discounted cash-flow analysis. Nor, based upon the record, are we able to find that appellant has affirmatively established that his bid represents fair market value. Consequently, we find the high bid offered by Chmelar was properly rejected. Viking Resources Corp., 97 IBLA 363 (1987); Suzanne Walsh, *supra*; Green v. Bureau of Land Management, 93 IBLA 237 (1986).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Kathryn A. Lynn
Administrative Judge
Alternate Member